IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5699 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

FIROZE M MOGAL

Appearance:

1. Special Civil Application No. 5699 of 2001

MR KS JHAVERI for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/03/2002

ORAL JUDGEMENT

Before dictating the judgment, the facts of this case prompted to recite Rubai of Ummar Khyam, which is referred as under :-

"Jindagi Mere Liye Kimti, Naimat Teri;

Muj Ko Peda Kiya Tune;
Yeh Hai Kudarat Teri;
Imatihan Lunga Mai, Do Char Baras Karke Gunah;
Jurum Mere Hai Jayada, Ke Hai Rahemat Teri;
Khalif Hai Harek Sher Ka Batta Tu Hi Batta;
Mai Banda Hu Aur Tu Hai Khuda, Tu Hi Batta,
Karta Hu Bura Mai, To Sajja Deta Hai;
Ham Dono Mai Kaya Farak Raha Tu Hi Batta."

#. Heard Mr.K.S.Zaveri, learned advocate appearing on behalf of the petitioner Corporation.

#. In the present petition, the petitioner Corporation has challenged the award passed by the labour court, Junagadh in Reference No.208 / 1998 dated 19th October, 2000, wherein the labour court has set aside the dismissal order granting reinstatement with continuity of service and 50 % backwages of the interim period and also awarded the cost of Rs.1000/- on the petitioner. Learned advocate Mr.Zaveri appearing on behalf of the Corporation has submitted that according to the allegations made against the respondent, he has not filled up regular for for being recruited on the post of Conductor but the workman has filled up form of Art-B Tin Smith Welder being Form No.595713 for the category of the Conductor. It is also pointed out that his name was not registered in the Employment Exchange and not forwarded by the Employment Exchange and therefore the respondent has committed misconduct and obtained appointment on the post of Conductor by submitting wrong form and thereby misrepresented before the Corporation. Therefore, chargesheet was served on the respondent workman on 29th April, 1994, against which, reply was submitted by the respondent on 18th May, 1994. Thereafter, departmental inquiry proceeding was initiated on 28th September, 1994 and 29th April, 1995 and ultimately, second show cause notice was given and thereafter, the respondent workman was dismissed from service on 27th June, 1995. The First Appeal and Second Appeal filed by the respondent workman came to be rejected by the appellate authority respectively. Learned advocate Mr.Zaveri has, therefore, submitted that by misrepresenting before the Corporation and not giving correct details by filing wrong form, the workman has obtained appointment by way of fraud and therefore, it amounts to serious misconduct and ultimately, this misconduct is found to have proved in departmental inquiry and therefore, dismissal order is legal and valid. In short, submission of learned advocate Mr.Zaveri is that the labour court has committed error in exercising the powers under Section 11-A of the Industrial Disputes Act, 1947 by interfering with the

punishment and directed reinstatement with continuity of service and 50 % backwages of the interim period. Learned advocate Mr.Zaveri also submits that the labour court has not applied its mind and not given any just and proper reasons in sup[port of the conclusion and therefore, there is clear error and hence, interference of this Court is called for in the interest of justice.

#. I have considered submissions made by the learned advocate Mr.Zaveri on behalf of the petitioner Corporation. It is necessary to note that form which has been filled up by the respondent workman was in respect of Category of Art B Tinsmith Welder bearing Registration No.595713 and his name was not mentioned in the employment exchange and despite of this fact, the workman filled up said form of some different category for the post of Conductor and submitted the same before the Corporation and obtained appointment on the post. It is also pertinent to note that there was Scrutinizing Committee constituted by the Corporation to scrutinize such Application Forms. However, while scrutinizing the application forms, no objection was raised by the petitioner Corporation. Thereafter, interview call was issued by the petitioner Corporation to the respondent, even on that occasion also, no care was taken by the petitioner Corporation to see that whether the From was correct or not; whether his name was forwarded by the Employment Exchange. Not only that, the interview committee has interviewed the respondent workman and he was selected. Thereafter, the respondent workman was sent for training for conductor post on 18th November, 1991 and thereafter, fitness certificate was also obtained by the workman and produced before the petitioner Corporation. Thus, ultimately the respondent was appointed at Una Depot on the post of Conductor on 30th November, 1991 and from that date onwards, he was working with the petitioner Corporation. Before the Labour Court, the respondent workman has given application under Section 11-A of the Industrial Disputes Act, 1947 vide Exh.32. No oral evidence was led by the petitioner Corporation. The respondent workman was not examined before the labour court. Thereafter, the labour court has framed the issue whether departmental inquiry which has been conducted against the respondent is legal or valid or not; whether in the inquiry, charged levelled against the respondent workman is found to have proved or not; whether the respondent workman is entitled to benefit under Section 11-A of the Industrial Disputes Act, 1947. In respect of first issue, the labour court has come to the conclusion that on the basis of the Purshis which was given by the respondent at Exh.32,

departmental inquiry held to be legal and valid. So far as the second issue is concerned, the labour court after examining the fact that form which has been filled up by the respondent has been scrutinized by the responsible officer of the Corporation and on that basis, interview call letter dated 14th March, 1990 has been served on the respondent. The respondent workman has also filed affidavit vide Exh.7. Thereafter the labour court has considered that the respondent workman having requisite qualification for the post of Conductor and therefore, he was selected by the Selection Committee. The entire procedure has been complied with by the petitioner Corporation but on no occasion, the petitioner Corporation has taken any objection against the respondent workman and he was appointed on 30th November, 1991. Therefore, considering the entire evidence led in the departmental inquiry, the labour court in reply to second issue, has come to the conclusion that charge levelled against the respondent workman is not found to have proved. Thereafter, the labour court has come to further conclusion that the respondent has not obtained the appointment by misrepresenting before the petitioner Corporation. That this is not case that in the name of some other person, the respondent workman has obtained appointment. On the contrary the respondent had appeared personally in the interview process and his record was also produced before the petitioner Corporation and he filled up form wherein correct details were given, which came to be scrutinized by the petitioner Corporation but no objection was raised. It is further observed that it is not the case, where the appointment was obtained by some unfair means and considering all these aspects, it is further observed that the respondent workman was having requisite qualification for the post of conductor and medical fitness certificate was issued by the Civil Surgeon in favour of the respondent workman and therefore, the labour court has come to the conclusion that misconduct is not found to have proved against the respondent workman while exercising the powers under Section 11-A of the I.D.Act and accordingly, the labour court has set aside the dismissal order and granted reinstatement with continuity of service with 50 % backwages of the interim period.

#. However, learned advocate Mr.Zaveri for petitioner Corporation has submitted that past record which has been produced before this Court at pg.48 Annexure-G, wherein 12 defaults seems to have committed by the respondent workman including the present misconduct. I have perused the default card but fact remains that said default card was not produced by the petitioner Corporation before the

labour court. A specific question is put by this Court to learned advocate for petitioner Mr.Zaveri that as to whether this default card was produced before the labour court, however, Mr.Zaveri, learned advocate is not able to give answer to the query of this Court. Even considering the list of record produced before the labour court, it does not transpires that any such document was produced before the labour court by the petitioner Corporation. Therefore, this default card cannot be considered by this Court on this count only. Another aspect that once the charge is not proved against the respondent workman as per the clear finding on the basis of the evidence led in the departmental inquiry, in that case also, there is no need to consider the past record because the charge is not proved and established against the respondent workman. In such situation, past record becomes irrelevant.

#. It is also necessary to note from the record itself produced by the petitioner Corporation that said past record was not considered by the competent authority at the time of passing dismissal order. Not only that, even said past record was not considered by the competent authority at the time of issuing show cause notice for dismissal. From the record itself, it is not clear whether said past record was produced before the labour court by the petitioner Corporation or not. A copy of the finding is not annexed by the Corporation with the petition. A bare perusal of the award not reflects that past record was produced before the labour court. Therefore, past record of the workman concerned was not part and parcel of the departmental inquiry. When past record has not become part and parcel of the departmental inquiry, then such record cannot be relied on by the petitioner Corporation just to give waitage in support of the dismissal order, meaning thereby, that dismissal order is based upon only misconduct in question and it was not based upon past record. Subsequently, the petitioner Corporation is not entitled to get support or any assistance from the past record for justifying the dismissal order. The labour court having powers under Section 11-A to see the material on record and not to consider any fresh evidence while exercising the said powers. For that, relevant Section 11-A of the I.D. Act, 1947 is narrated as under :-

"11-A Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen :-

Where an industrial dispute relating to the

discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks it fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]

#. Considering Section 11-A of the Act, it is made clear that the labour court shall have to consider the only material on record and no fresh evidence while exercising the powers under Section 11-A of the I.D. Act, 1947. If past record is not become part and parcel of the departmental inquiry, then it cannot be considered as materials on record. Therefore, the labour court is entitled to ignore such past record. Even this Court will ignore the past record as past record is produced by the petitioner Corporation for the first time before this Court. For this aspect, view has been taken by this Andhra Pradesh High Court in case of A.V.SWAMI V. INDUSTRIAL TRIBUNAL CUM LABOUR COURT, WARANGAL AND ANOTHER reported in 1991 [2] LLJ 430. Relevant observations made in para-5 are quoted as under :-

"5. An analysis of this section shows that if the Labour Court is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal, as the circumstances of the case may require. The proviso to the said section is extremely important for the purpose of the case on hand which reads that in any proceeding under this section, the Labour Court shall rely only on the

> materials on record and shall not take any fresh evidence in relation to the matter. Therefore, the question is whether the past record of service comes within the category of "materials on record" for the purpose of this case. It is an undisputed fact that the past record of service was neither considered nor referred to by either the workman or the second respondent Corporation at the time of the enquiry against the petitioner. But the past record of service has been considered in a detailed fashion by the Labour Court while coming to the conclusion that the order of removal is justified in the circumstances of the case. In fact, about three full pages have been written about the past record of service of the petitioner. This past record of service is evidently not material on record as visualized in the proviso to Section 11-A. Therefore, the question is, would the Tribunal have come to the same conclusion, viz. that the order or removal is justified had it not looked into the past record of the petitioner. Suffice it to state that from the manner in which the award has been passed, it is easy to see that a lot of emphasis has been placed on the past record of service of the petitioner. The approach of the Industrial Tribunal was clearly wrong only on the basis of the appreciation of the material on record and not by taking into consideration the past record of service of the petitioner. In this view of the matter, the award dated April 3, 1987, passed by the Labour Court in I.D. No.141 of 1986 is set aside and the matter is remanded to the Industrial Tribunal for fresh consideration in accordance with the provisions of Section 11-A of the Industrial Disputes Act especially the proviso to the said section, by taking into consideration only the materials on record and not the past record of service of the petitioner. The Labour Court may consider the matter and pass an award within two months from the date of receipt of this order."

In view of above observations made by the Andhra Pradesh High Court and considering the effect of Section 11-A of the I.D.Act, 1947 as well as looking to the record of the present case, according to my opinion, the labour court has rightly ignored the past record of the respondent workman and for that, no error has been committed by the labour court which requires any interference by this Court.

#. In similar situation, view taken by the Kerala High Court in case of PRADEEP KUMAR VS. MOHANAN reported in 1998 [1] CLR 1021 is important to be referred, wherein the division bench of the Kerala High Court has observed that cancellation of the appointment after completing of seven years without any complaint against efficiency on the ground that appointment was made under some mistake, would be traversity of justice. Similarly, the Apex Court has also considered this aspect and the issue has been examined by the Apex Court in a cases more than one in number. In case of H.C.PUTTASWAMY AND OTHER V. THE HON'BLE THE CHIEF JUSTICE OF KARNATAKA HIGH COURT reported in AIR 1991 SC 295. The facts of aforesaid case reveals that appointments made by the Chief Justice of High Court of Karnataka in contravention of provisions of Karnataka Civil Services [Ministerial Posts] Recruitment Rules, 1977 under which the powers to make selection under the Rules is vested in the State Public Sevice Commission and the District Judge has powers to make appointment as per selection list. The relevant observations made in para-11 are reproduced as under :-

"11. The judiciary is the custodian of constitutional principles which are essential to the maintenance of rule of law. It is the vehicle for the protection of a set of values which are integral part of our social and political philosophy. Judges are the most visible actors in the administration of justice. Their case decisions are the most publicly visible outcome. But the administration of justice is just not deciding disputed cases. It involves great deal more than that. Any realistic analysis of the administration of justice in the Courts must also take into account the totality of the Judges behaviour and their administrative roles. They may appear to be only minor aspects of the administration of justice, but collectively they are not trivial. They constitute, in our opinion, a substantial part of the mosaic which represents the ordinary man's perception of what the Courts are and how the judges go about their work. The Chief Justice is the prime force in the High Court. Article 229 of the Constitution provides that appointment of officers and servants of the High Court shall be made by the Chief Justice or such other Judge or Officer of the Court as may be directed by the Chief Justice. The object of this Article was to secure the independence of the High Court which

cannot be regarded as fully secured unless the authority to appoint supporting staff with complete control over them is vested in the Chief Justice. There can be no disagreement on this matter. There is imperative need for total and absolute administrative independence of the High Court. But the Chief Justice or any other Administrative Judge is not an absolute ruler. Nor he is a free wheeler. He must operate in the clean world of law, not in the neighborhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by same principles and values as those of the Court he is serving. He cannot depart from and indeed must remain committed to the constitutional ethoes and traditions of his calling. We need hardly say that those who are expected to oversee the conduct of others must necessarily maintain a higher standard of ethical and intellectual rectitude. The public expectations do not seem to be less exacting."

#. The above referred decision of the Apex Court has been again considered in case of SMT. VIJAY GOEL AND OTHERS VS. UNION OF INDIA AND ANOTHER reported AIR 1998 SC 101. The relevant observations made in para-14 are quoted as under :

"14. In H.C.Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court, Banglore, 191 Supp [2] SCC 421 : [AIR 1991 SC 295] appointments to the post of typists were made by the Chief justice of the High Court of Karnataka in contravention of the provision of the Karnataka Subordinate Courts [Ministerial and other Posts] Recruitment Rules, 1977 under which power to make selection was vested in the State Public Service Commission. The selection was required to be made by written test followed by interview. The appointing authority was District Judge of the particular district where appointment were to be made. In a writ petition filed by certain candidates the High Court of Karnataka set aside the appointments being violative of Article 14 and 16[1] of the Constitution. This Court further found that the candidates had been working for over 10 years and they possessed qualifications more than what was the requirement under the Rules. Some of the candidates even earned higher qualification

> during their service and some were promoted to higher cadre as well. They were now overaged for entry into any other service. This Court has observed : "One could only imagine their untold miseries and of their family if they are left at the mid stream. Indeed, it would be an act of cruelty at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection." The Court also referred to certain precedents where on equitable considerations this Court did not set aside the appointments even though the selection of the candidates was held to be illegal and unsupportable. The Court said : "The precedents apart, the circumstances of this case justify an humanitarian approach and indeed, the appellant seem to deserve justice ruled by mercy." The Court, therefore, directed that the candidates should be treated to be regularly appointed with all the benefits of the past service."

#. Considering the view taken by the Apex Court as well as Division Bench of the Kerala High Court and considering the facts of this case, it transpires that only one technical defect committed on the part of the respondent workman. However, this can not be said to be a mistake on the part of the workman but this is glaring mistake on the part of the Corporation while scrutinizing the application form filled up by the respondent workman. It is also pertinent to note that though the name of the respondent workman was not forwarded from the employment exchange, entire exercise of due selection process has been followed in case of the respondent workman. Not only this, but it seems that at the relevant time, the petitioner Corporation has allowed the respondent workman to submit incorrect form and inspite of the fact that his name was not forwarded by Employment Exchange. The entire exercise has been carried out by the petitioner corporation without any objection and ultimately, appointment was given by the petitioner Corporation in favour of the respondent workman. Therefore, obviously it was not case of fraud by the respondent workman but it was case of mistake on the part of the petitioner Corporation for not getting proper instructions whether his name has been forwarded by the Employment Exchange or not. One more aspect which appeals to this Court that when the respondent was appointed and was working with the petitioner Corporation for more than five years and therefore, in view of this Court, dismissal order has been rightly quashed and set aside while exercising the

powers under Section 11-A of the Industrial Disputes Act, 1947. It has also come on record from the findings that the charge levelled against the respondent is not found to have proved and therefore also, according to my opinion, the labour court has rightly exercised the powers under Section 11-A of the I.D.Act. Therefore, the labour court has not committed any jurisdictional error and not committed any procedural irregularity while passing such award under challenge.

#. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANDKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

#. In view of above observations made by the Apex Court and considering the finding recorded by the labour court, according to my opinion, there is no error committed by the labour court which in any way requires interference of this Court while exercising the powers under Article 226 and 227 of the Constitution. Therefore, there is no substance in this petition and the same is rejected at the threshold.

Date : 16-3-2002 [H.K.Rathod, J.]

#kailash#